IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 84 OF 2006

1. Shri Ganu Shiva Fadte (since deceased,
rep. Through his legal heirs)
(a) Smt. Kalavati Ganu Fadte,
wife & Ors. .... Appellants

Versus

1. Shri Sudhakar Harichandra Naik & Anr. .... Respondents

Shri Arun Bras De Sa, Advocate for the Appellants

Shri S.D. Padiyar, Advocate for the Respondents.

CORAM : **P.V. KAKADE, J.**

DATE : **28th NOVEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties. Perused the record.

2. This is an appeal against the judgment and order passed by the Additional District Judge, North Goa, Panaji dismissing the appeal and confirming the order passed by the Civil Judge, Junior Division, Ponda dismissing the plaintiff's suit for permanent injunction and consequential reliefs.

3. The appellant-plaintiff came with the case that he was the co-owner in possession of the property involved, situated at Madkai. According to the plaintiff on 8/10/1987, on request of the defendant no.1, he sold total area of 42 sq. mtrs. for a sum of Rs. 1200/-, underneath the house of the defendants. The plaintiff claimed that the defendant on 22/04/1990 with the help of some other labourers trespassed into the plaintiff's property and extended the plinth area of his house by another 40 sq. mtrs. on Southern side of the said house by 8 mtrs. into 5 mtrs. It was alleged that defendants had no right in the property to carry out extension to the house and such an extension was an infringement of plaintiff's proprietory rights in the property and, hence, the suit. Defendants contested the suit, inter alia, denying the allegations that they had made infringement over the property of the plaintiff, though he admitted having purchased 42 sq. mtrs. area from the plaintiff in October, 1997. It was the case sought to be made out by the defendants that at the time of sale transaction the plaintiff had agreed to sell to them, area of store room situated at left hand side of their house, admeasuring 8.33 sq. mtrs. as well as an area of courtyard having an area of 23 sq. mtrs. According to the defendants, they were in possession of altogether 106.50 sq. mtrs. of land, including their house and further submitted that they had not trespassed

into the property and sought dismissal of the suit.

4. The trial Court after hearing both the parties and on the basis of available evidence, came to the conclusion that the plaintiff failed to prove the alleged encroachment over the property and, as such, held that the plaintiff was not entitled to the reliefs claimed in the suit and, hence, the suit came to be dismissed. The appeal was filed in the District Court. The learned Additional District Judge, North Goa, Panaji concurred with the findings recorded by the trial Court and dismissed the appeal.

Hence, the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. Both Courts below are seen to have properly appreciated the entire evidence in proper perspective. The learned Counsel for the appellant submitted that there were some substantial questions of law involving the rule of Evidence Act, in the sense that burden to prove particular facts, was wrongly held to be on the plaintiff inspite of the admissions given by the defendants. However, on perusal of the judgment of both the Courts below vis-a-vis pleadings, it is apparent that no illegality has been committed by the Courts below and, therefore, it

is not a fit case to interfere with. Hence, the appeal is devoid of any merits and, hence, stands dismissed with no order as to costs.

P.V. KAKADE, J.

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